

1 ANDRÉ BIROTTE JR.
United States Attorney
2 ROBERT E. DUGDALE
Assistant United States Attorney
3 Chief, Criminal Division
STEPHEN I. GOORVITCH (California Bar #199325)
4 Assistant United States Attorney
Major Frauds Section
5 1100 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-2476
7 Facsimile: (213) 894-6269
Email: Stephen.Goorvitch@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Case No. 11-CR-199-PA
13)
Plaintiff,) GOVERNMENT'S SENTENCING
14) POSITION - PART I
v.)
15) Hearing Date/Time:
MARK ROY ANDERSON,)
16) **January 10, 2012, at 10:00 a.m.**
Defendant.)
17)
18)
19)
20)

21 Plaintiff United States of America, by and through its
22 counsel of record, Assistant United States Attorney Stephen I.
23 Goorvitch, hereby submits Part I of its Sentencing Position in
24 the above-entitled action.¹ The sentencing is currently
25 scheduled for Tuesday, January 10, 2012, at 10:00 a.m. This
26

27 ¹ Because Part II of the Government's Sentencing Position
28 contains personal and financial information about the victims,
the government intends to file it under seal.

1 sentencing position is based on the attached memorandum of points
2 and authorities, the pre-sentence investigation report (the
3 "PSR"), the pleadings and exhibits associated with the
4 government's ex parte application to revoke defendant's bond, the
5 files and records in this case, and any argument at the
6 sentencing hearing.

7
8 Dated: December 7, 2011

9 ANDRÉ BIROTTE JR.
10 United States Attorney

11 ROBERT E. DUGDALE
12 Assistant United States Attorney
Chief, Criminal Division

13 /s/ Stephen I. Goorvitch
14 STEPHEN I. GOORVITCH
Assistant United States Attorney

15 Attorneys for Plaintiff
16 UNITED STATES OF AMERICA
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Mark Roy Anderson ("defendant") pleaded guilty to charges
5 relating to an oil investment fraud scheme involving at least 21
6 victims and resulting in losses of at least \$9.5 million. The
7 PSR has determined that the total offense level is 32 and that
8 defendant falls within Criminal History Category III based on
9 prior state convictions for forgery, grand theft, and preparing
10 false evidence and prior federal convictions for wire fraud.
11 Thus, the applicable sentencing range is 151 to 188 months. The
12 government concurs in the PSR's findings and respectfully
13 recommends that the Court sentence defendant to 151 months
14 imprisonment.²

15 II.

16 DEFENDANT'S BACKGROUND

17 A. Defendant's Educational and Professional Background

18 Defendant obtained a bachelor degree from the University of
19 Nevada at Reno in 1976 and a law degree from McGeorge Law School
20 in 1981. See PSR ¶¶ 83-84, 102-03. Defendant was admitted to
21 the bar in Nevada, where he practiced law before moving to
22 California, where he practiced law without a license in 1982 and
23 1983. See PSR ¶ 84. Defendant was disbarred by the State Bar of
24 Nevada in 1993. See PSR ¶ 105. Defendant is currently 57 years
25

26 ² Should the Court determine that a different sentencing
27 range applies to this case, the government would recommend that
28 the Court sentence defendant to the low-end of that range or 84
months imprisonment, whichever is greater, pursuant to Paragraph
3(e) of the plea agreement. See Plea Agreement at ¶ 3(e).

1 old. See PSR ¶ 79.

2 B. Defendant's First Set of Criminal Convictions

3 Defendant was charged with five counts of grand theft, two
4 counts of preparing false evidence, and two counts of attempted
5 grand theft in Case Number LA003811. See PSR ¶¶ 57-67.

6 Defendant pleaded guilty to all of these counts and was sentenced
7 to four years in state prison. See PSR ¶ 57.

8 1. Count One - Grand Theft

9 On July 25, 1988, defendant induced a victim to give him a
10 check for \$400,000 in exchange for an interest in an office
11 building in Beverly Hills that defendant represented that he
12 owned. See PSR ¶ 12. However, defendant never owned the
13 building. See id.

14 2. Count Two - Grand Theft

15 On October 14, 1988, defendant induced a victim to give him
16 a check for \$175,000 in exchange for an interest in a property in
17 La Jolla, California. See PSR ¶ 61. Defendant did not own that
18 building. See id.

19 3. Count Three - Grand Theft

20 Defendant agreed to exchange a property that he did not own
21 for a house in Encino, California. See PSR ¶ 62. By the time
22 the fraud was discovered, he had already transferred the Encino
23 home to a third party who had taken out a \$350,000 loan against
24 the property. See id.

1 4. Counts Four and Seven - Preparing False Evidence

2 Defendant manufactured two false letters for use in civil
3 trials, forging the victim's signature. See PSR ¶ 63.
4 Specifically, these (false) letters purportedly released
5 defendant and the respective victim from mutual counter claims.
6 See id.

7 5. Count Five - Grand Theft

8 A victim sold defendant two properties. See PSR ¶ 64.
9 Defendant recorded the deeds but refused to assume the loan or
10 make payments to the victim. See id.

11 6. Count Six - Attempted Grand Theft

12 Defendant offered to purchase an apartment building in
13 Glendale, California. See PSR ¶ 65. However, defendant did not
14 provide sufficient funds to the escrow company and never wired
15 the promised amount of money. See id. When the victim canceled
16 escrow, defendant caused a lis pendens to be filed. See id.

17 7. Count Eight - Grand Theft

18 Defendant transferred to the victim a trust deed from an
19 office building he owned in Mission Valley. See PSR ¶ 66.
20 Defendant failed to make payments on the building, per the escrow
21 instructions, but kept the rent proceeds. See id.

22 8. Count Nine - Attempted Grand Theft

23 Defendant entered escrow to purchase six and one half acres
24 of land in Agoura, California for approximately \$1.5 million.
25 See PSR ¶ 67. Defendant's checks to escrow were returned for
26 insufficient funds. See id. Defendant then negotiated a better
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28

1 deal, but when the victim sought to cancel the amended deal,
2 defendant refused to sign the necessary paperwork. See id.

3 C. Defendant's Second Set of Criminal Convictions

4 While defendant was released on bond in Case Number
5 LA003811, he committed forgery and grand theft, resulting in
6 charges in Case Number LA007048. See PSR ¶ 53 (defendant
7 "admitted the special allegation[] of . . . felony committed
8 while released on bail."). Specifically, defendant pledged a
9 property as collateral for a loan of \$120,000. See PSR ¶ 55.
10 When the lender discovered that there was already an existing
11 loan on the property due the next day, defendant claimed that he
12 would have the first lender provide documentation extending the
13 first loan. See id. Instead, defendant provided a false
14 document purportedly from the first lender. See id.

15 Defendant pleaded guilty to these charges. See PSR ¶ 52.
16 The court sentenced him to 32 months in state prison, to run
17 consecutively with the four year sentence in Case Number
18 LA003811. See id.³

19 D. Defendant's Third Set of Criminal Convictions

20 Between 1983 and 1986, defendant devised and executed a
21 Ponzi-type scheme to defraud investors who invested in
22 partnerships to purchase and restore historic buildings around
23

24
25 ³Although Case Numbers LA003811 and LA007048 are separate
26 cases stemming from different criminal conduct, defendant
27 receives criminal history points for only one of the two cases,
pursuant to U.S.S.G. § 4A1.2(a)(2) ("If there is no intervening
arrest, prior sentences are counted separately unless . . . the
sentences were imposed on the same day.").

1 the country. See PSR ¶ 72; see also United States v. Mark Roy
2 Anderson, 993 F.2d 1435, 1436-37 (9th Cir. 1993). Defendant
3 formed approximately 20 limited partnerships involving about
4 2,000 investors, following which he commingled funds from the
5 various projects and diverted funds from one project to pay for
6 another project. See PSR ¶ 72. Defendant perpetrated this
7 scheme while claiming to be a California attorney. See id.

8 Defendant pleaded guilty and agreed to pay \$6,801,035 in
9 restitution relating to three properties. See id. However, the
10 total losses from the scheme were \$47,582,818. See id. The
11 district court (Tevrizian, J.) sentenced defendant to 84 months
12 imprisonment. See PSR ¶ 68; see also Anderson, 993 F.2d at 1437.
13 Defendant appealed, and the Ninth Circuit vacated the
14 convictions, finding that defendant's plea was not voluntary.
15 See PSR ¶ 70; Anderson, 993 F.2d at 1437-38. On remand,
16 defendant filed a motion for a Kastigar hearing, which the
17 district court denied. See United States v. Mark Roy Anderson,
18 79 F.3d 1522, 1524-31 (9th Cir. 1996). The district court
19 (Tashima, J.) again sentenced defendant to 84 months
20 imprisonment, to run concurrently with the sentences imposed in
21 Case Numbers LA003811 and LA007048. Defendant appealed the
22 district court's ruling on the Kastigar hearing, which the Ninth
23 Circuit affirmed. See id.

24 Defendant was charged on April 5, 1991 and initially
25 sentenced on July 1, 1991. See PSR ¶¶ 68, 70. Defendant was
26 paroled from federal custody on March 10, 1996. See PSR ¶ 71.

1 Based on these dates, the government believes that defendant
2 served less than five years of his federal sentence due to
3 federal parole, which has since been abolished.

4 E. Defendant's LASIK Eye Surgery Centers

5 Following his release from prison, from 1996 to 1999,
6 defendant started a chain of LASIK eye surgery centers. See PSR
7 ¶ 87. The business collapsed after defendant's business partner
8 was arrested for Medicare and MediCal fraud. See id.

9 F. Defendant's Designee Labels Business

10 Defendant then started a designer labels business, building
11 the company into a chain of 36 stores. See PSR ¶ 88. The
12 business collapsed in 2001 to 2002. See id.

13 G. The SEC's Civil Judgment Against Defendant

14 On September 12, 2007, the U.S. Securities and Exchange
15 Commission (the "SEC") filed a civil enforcement action against
16 defendant and several of his companies, including Terax Energy,
17 Inc. and Westar Oil, Inc. See Securities and Exchange Commission
18 v. Terax Energy, Inc., et al., Case No. 07-CV-1554-BD. The
19 complaint alleged that defendant caused his companies to issue
20 materially false and misleading press releases in connection with
21 the offer, purchase, and sale of securities. See id.

22 On September 12, 2007, the district court issued a temporary
23 restraining order against defendant. See id. On September 20,
24 2007, the district court issued an agreed preliminary injunction
25 against defendant. See id. On September 30, 2008, the district
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1 court issued an agreed permanent injunction against defendant.

2 See id.

3 III.

4 DEFENDANT'S CURRENT OFFENSE

5 A. The Offense Conduct

6 Beginning in or about March 2006, defendant began defrauding
7 victims by representing that he would invest their money in one
8 of several oil companies, including Westar Oil, Inc. and Terax,
9 Inc. See PSR at ¶ 14. Defendant also represented that he would
10 use their money to fund oil ventures, including oil rigs in
11 Oklahoma and oil leases in Oklahoma and Kern County, California.
12 See id. In total, defendant defrauded at least 21 victims out of
13 at least \$9.5 million. See PSR at ¶ 22.

14 Defendant did not spend victims' funds as promised. See PSR
15 at ¶ 17. For example, defendant used over \$3 million that he
16 fraudulently obtained from B.W. and R.W. to satisfy the judgment
17 in the SEC civil case in the Northern District of Texas. See
18 Government's Sentencing Position, Part II. Defendant used the
19 rest of the funds for lavish living expenses and an investment in
20 the former Prego Restaurant in Beverly Hills, California. See
21 PSR at ¶ 17.

22 B. Post-Arrest Proceedings

23 Following his arrest, defendant was released on bond.
24 However, defendant continued to commit additional crimes,
25 soliciting funds from two investors based on a fraudulent oil rig
26 scheme. The government filed an emergency ex parte application
27

1 to revoke defendant's bond, which the Court granted on April 28,
2 2011. Subsequently, defendant pleaded guilty to one count of
3 wire fraud and one count of money laundering relating to one
4 victim, P.L. See PSR at ¶¶ 1-3.

5 IV.

6 SENTENCING GUIDELINES CALCULATIONS

7 A. Base Offense Level: 7

8 Defendant pleaded guilty to one count of wire fraud, which
9 has a statutory maximum sentence of 20 years imprisonment. See
10 PSR at ¶ 35. Therefore, the base offense level is 7, pursuant to
11 U.S.S.G. § 2B1.1(a). See id.

12 B. Loss Amount: +20

13 The government believes that the total losses in the case
14 are at least \$9.5 million and concurs with the PSR's findings
15 that a 20-level loss enhancement applies. See PSR at ¶ 36.
16 Counsel have met-and-conferred with respect to sentencing. While
17 defense counsel (acting in good faith) has not committed to a
18 position with respect to this enhancement, the government
19 believes that the only dispute relating to the total loss amount
20 may be whether B.W. and R.W. were, in fact, defrauded. Should
21 the Court decide that they were not victims, the total losses
22 would be less than \$7 million, resulting in only an 18-level
23 enhancement. Therefore, at this stage, the government will rely
24 exclusively on the PSR with respect to loss, except with respect
25 to whether defendant defrauded B.W. and R.W. Because the
26 exhibits relating to that issue contain victims' names and
27

1 financial information, the government will address the relevant
2 issues in Part II of its Sentencing Position.

3 C. Number of Victims: +2

4 The government concurs with the PSR's finding that there are
5 over 10 victims, resulting in a two-level enhancement. See PSR
6 at ¶ 37. Because the number of victims may not be in dispute at
7 sentencing, the government will rely exclusively on the PSR
8 unless defendant raises a credible challenge to the applicability
9 of this enhancement.

10 D. Money Laundering Enhancement: +1

11 Defendant pleaded guilty to one count of money laundering.
12 See PSR at ¶ 40. Therefore, there is a one-level enhancement.
13 See id.

14 E. Violation of Texas Injunctions: +2

15 The injunctions issued by the U.S. District Court for the
16 Northern District of Texas prohibit defendant from violating the
17 anti-fraud provisions of the federal securities laws or
18 distributing securities through the mails or instrumentalities of
19 interstate commerce without a registration statement or
20 applicable exemption. Subsequently, defendant violated the
21 injunctions in his transmission of fraudulent stock to E.S. See
22 PSR at ¶¶ 20. Therefore, a two-level enhancement applies. See
23 PSR at ¶ 38.

24 The government assumes that defendant will challenge this
25 enhancement at sentencing. Because the exhibits relating to this
26 enhancement reference E.S.'s name and financial information, as
27
28

1 well as details of her private life, the government will address
2 the relevant issues in Part II of its Sentencing Position.

3 F. Obstruction of Justice: +3

4 The government filed an ex parte application to revoke
5 defendant's bond based on additional crimes he committed while on
6 pretrial release. Specifically, defendant defrauded N.Z. and
7 C.L. of \$125,000 by claiming to have access to an oil rig. See
8 PSR at ¶ 21. The Court held a hearing on April 28, 2011,
9 following which it revoked defendant's bond and remanded him into
10 custody.

11 The government assumes that defendant will challenge this
12 enhancement at sentencing. The government relies on the Court's
13 prior finding that defendant violated the terms and conditions of
14 his release on bond, but also incorporates by reference its ex
15 parte application and exhibits (filed as Docket Entry #41).

16 G. Timely Acceptance of Responsibility: -3

17 Defendant pleaded guilty sufficiently early to save the
18 government resources in preparing for trial. See PSR at ¶ 45.
19 Therefore, the government moves for the third point for timely
20 acceptance of responsibility.

21 V.

22 SENTENCING RECOMMENDATION

23 The government believes that a sentence of 151 months
24 imprisonment will satisfy the dictates of 18 U.S.C. § 3553(a).
25 This sentence is almost twice as much as his prior federal
26 sentence of 84 months and more than twice the amount of time
27

1 defendant actually served on that sentence. Therefore, it is
2 stringent enough to reflect the seriousness of defendant's
3 offense and to afford adequate deterrence to criminal conduct.
4 See 18 U.S.C. §§ 3553(a)(1) and (2)(A),(B).

5 A sentence of 151 months imprisonment is also sufficient to
6 protect the public from further criminal conduct by defendant.
7 Defendant's criminal history demonstrates that he repeatedly
8 engages in schemes to defraud. A sentence of over twelve years
9 will prevent defendant from victimizing the public. See 18
10 U.S.C. § 3553(a)(2)(C).

11 A sentence of 151 months imprisonment will provide
12 sufficient opportunity for defendant to receive any necessary
13 educational or vocational training, as well as medical care and
14 correctional treatment. See 18 U.S.C. § 3553(a)(2)(C). The
15 government notes that defendant may benefit from treatment for
16 drug and alcohol abuse. See id.

17 Finally, the government notes that because defendant is 57
18 years old, see PSR at ¶ 79, a sentence of 151 months imprisonment
19 would result in his incarceration for much of the rest of his
20 life. While the Court may feel that defendant's crimes are
21 egregious, especially in light of his criminal history, the
22 government notes that defendant accepted responsibility and
23 pleaded guilty sufficiently early to save the government
24 resources. Because defendant pleaded guilty, the undersigned
25 Assistant U.S. Attorney and the case agents were able to handle
26 additional matters that they otherwise would not have been able
27

1 to handle. The government takes this into account in
2 recommending a sentence of 151 months imprisonment.

3 VI.

4 RESTITUTION

5 The government commends the probation officer's diligent
6 efforts to decipher the network of victims and the applicable
7 credits to defendant based on prior restitution. However, the
8 government ultimately does not agree with the victim and
9 restitution information contained in Attachment A to the PSR.
10 Specifically, Attachment A does not credit defendant for
11 restitution that has already been made to some of the victims,
12 and it may omit certain victims and losses. Therefore, the
13 government will file a short brief prior to sentencing with the
14 correct restitution information.

15 VII.

16 SUPERVISED RELEASE

17 The government respectfully recommends that the Court impose
18 the maximum three-year term of supervised release. As is clear
19 from defendant's criminal history, there is a significant risk of
20 recidivism. Moreover, the maximum term of supervision is
21 necessary to ensure that defendant makes his best efforts to pay
22 restitution.

23 VIII.

24 DISMISSAL OF REMAINING COUNTS AND EXONERATION OF BOND

25 Finally, at the sentencing hearing, the government intends
26 to dismiss the first indictment, as well as Counts Two through
27

1 Eleven and Thirteen through Seventeen of the First Superseding
2 Indictment. The government also intends to move to exonerate the
3 bond so the posted property may be returned to James and Mollie
4 Siri. See Docket Entry #40.

5 IX.

6 CONCLUSION

7 Based on the foregoing, the government respectfully
8 recommends that the Court impose a sentence of 151 months
9 imprisonment, and a three-year period of supervised release.

10
11 Dated: December 7, 2011

12 ANDRÉ BIROTTE JR.
13 United States Attorney

14 ROBERT E. DUGDALE
15 Assistant United States Attorney
Chief, Criminal Division

16 /s/ Stephen I. Goorvitch
17 STEPHEN I. GOORVITCH
Assistant United States Attorney

18 Attorneys for Plaintiff
19 UNITED STATES OF AMERICA
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21
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